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HOUSE BILL NO. 589

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 58.1-439.12:03 of the Code of Virginia, relating to income tax; motion picture production tax credit.

Patron—Scott, D.L.

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.12:03 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-439.12:03. Motion picture production tax credit.

A. For taxable years beginning on and after January 1, 2011, ~~but prior to January 1, 2027,~~ any motion picture production company with qualifying expenses of at least \$250,000 with respect to a motion picture production filmed in Virginia shall be allowed a refundable credit against the taxes imposed by § 58.1-320 or 58.1-400 in an amount equal to 15 percent of the production company's qualifying expenses or 20 percent of such expenses if the production is filmed in an economically distressed area of the Commonwealth. The Virginia Economic Development Partnership Authority shall designate which areas of the Commonwealth are deemed to be economically distressed areas. The credit shall be computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. ~~The refundable tax credits allowed under this section are for one tax year only. Where a motion picture production continues for more than one year, a separate application for each tax year the production continues must be made. The~~ grant of a refundable tax credit for a motion picture film production does not create a presumption that the production will receive a refundable tax credit for subsequent tax years. ~~Effective on January 1, 2013, for~~ For purposes of eligibility for refundable tax credits, a "motion picture film production" shall ~~include~~ *includes a production of digital interactive media production, episodic content, gaming, virtual reality, and augmented reality, provided such production complies with all other requirements of this section.*

"Qualifying expenses" means the sum of the following amounts spent in the Commonwealth by a production company in connection with the production of a motion picture filmed in the Commonwealth:

1. Goods and services leased or purchased. For goods with a purchase price of \$25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

2. Compensation and wages, except in the case of each individual who directly or indirectly receives compensation in excess of \$1 million for personal services with respect to a single production. In such a case, only the first \$1 million of salary shall be considered a qualifying expense. An individual is deemed to receive compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

B. 1. In addition to the refundable credit authorized under subsection A, such production company shall be allowed an additional refundable credit equal to 10 percent of the total aggregate payroll for Virginia residents employed in connection with the production of a film in the Commonwealth when total production costs in the Commonwealth are at least \$250,000 but not more than \$1 million. This additional credit shall be equal to 20 percent of the total aggregate payroll for Virginia residents employed in connection with such production when total production costs in the Commonwealth exceed \$1 million.

2. In addition to the credits authorized under subsection A and subdivision B 1, such production company shall be allowed an additional refundable credit equal to 10 percent of the total aggregate payroll for Virginia residents employed for the first time as actors or members of a production crew in connection with the production of a film in the Commonwealth.

C. 1. For purposes of this section, in the case of an episodic television series, an entire season of episodes shall be deemed to be one production.

2. No credit shall be allowed under this section for any production that (i) is political advertising, (ii) is a television production of a news program or live sporting event, (iii) contains obscene material, or (iv) is a reality television production.

D. 1. The issuance of refundable tax credits under this section shall be in accordance with procedures, qualifying criteria, and deadlines established by the Department and the Virginia Tourism

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HB589

59 Authority. The qualifying criteria established by the Virginia Tourism Authority shall take into account
60 whether the production involves physical production within the Commonwealth of Virginia, the number
61 of residents of Virginia that will be employed in the production and the level of compensation they will
62 be paid, the extent to which the production will contribute to the support and expansion of existing
63 production companies in Virginia, the extent to which the production will impact existing local
64 businesses and the local economy, the extent to which the production will involve existing and new
65 companies located in Virginia, and other relevant considerations. The taxpayer shall apply for a credit by
66 submitting such forms as prescribed by the Virginia Tourism Authority, prior to the start of production
67 in Virginia.

68 2. Any taxpayer seeking credits under this section must enter into a memorandum of understanding
69 with the Virginia Tourism Authority that at a minimum provides the requirements that the taxpayer must
70 meet in order to receive the credits, including but not limited to the estimated amount of money to be
71 spent in Virginia, the timeline for completing production in Virginia, and the maximum amount of
72 credits allocated to the taxpayer.

73 3. Once the taxpayer has satisfied all of the requirements in the memorandum of understanding to the
74 satisfaction of the Virginia Tourism Authority and completed production in Virginia, the Virginia
75 Tourism Authority shall certify the final tax credit amount to the taxpayer and to the Tax Commissioner.
76 In addition, such certificate shall specify the fiscal year in which such tax credit may be refunded by the
77 Department of Taxation. The tax return filed for the taxable year in which the Virginia production
78 activities are completed shall contain information specifying the amount of tax credit and shall specify
79 the fiscal year in which such tax credit may be refunded. The return must state the name of the
80 production, provide a description of the production, and include a detailed accounting of the qualifying
81 expenses with respect to which a credit is claimed.

82 4. The Virginia Tourism Authority shall report to the Tax Commissioner on an annual basis the
83 amount of tax credits that have been authorized for each fiscal year and the amount of tax credits that
84 may be claimed for the current fiscal year by each taxpayer.

85 5. No interest shall be paid pursuant to § 58.1-1833 on any tax credit issued by the Department
86 under this section.

87 E. A taxpayer allowed a credit under this section must maintain and make available for inspection
88 any information or records required by the Tax Commissioner. The taxpayer has the burden of proving
89 eligibility for a credit and the amount of the credit. The Tax Commissioner shall consult with the
90 Virginia Tourism Authority in order to determine the amount of qualifying expenses.

91 F. For purposes of this section, the amount of any credit attributable to a partnership, electing small
92 business corporation (S corporation), or limited liability company may be allocated to the individual
93 partners, shareholders, or members, respectively, in proportion to their ownership or interest in such
94 business entities.

95 G. 1. The total amount of credits allocated to all taxpayers under this section shall not exceed \$2.5
96 million in the 2010-2012 biennium, \$5 million in the 2012-2014 biennium, ~~and~~ \$6.5 million in fiscal
97 ~~year~~ years 2015 through 2020, and \$15 million in fiscal year 2021 and each fiscal year thereafter.
98 *Credits allocated for productions of digital interactive media, episodic content, gaming, virtual reality,*
99 *and augmented reality shall not count against the aggregate limit required by this subsection; however,*
100 *such productions shall be required to comply with all other provisions of this section.*

101 2. *Beginning with fiscal year 2021, if the amount of credits actually claimed is less than the*
102 *aggregate limit specified in subdivision 1, the unclaimed remainder shall be carried over to the next*
103 *fiscal year and added to the aggregate limit for that year.*

104 H. The Department of Taxation, in consultation with the Virginia Tourism Authority, must publish
105 by November 1 of each year for the 12-month period ending the preceding December 31 the following
106 information:

107 1. Location of sites used in a production for which a credit was claimed;

108 2. Qualifying expenses for which a credit was claimed, classified by whether the expenses were for
109 goods, services, or compensation paid by the production company;

110 3. Number of people employed in the Commonwealth with respect to credits claimed; and

111 4. Total cost to the Commonwealth's general fund of the credits claimed.

112 Notwithstanding any provision of § 58.1-3 or any other law, such information shall be published by
113 the Department, even if such information is not classified, so as to prevent the identification of
114 particular taxpayers, reports, or returns and items.

115 I. The Tax Commissioner shall develop guidelines implementing the provisions of this section,
116 including but not limited to the definition of "qualifying expenses" and setting forth the recordkeeping
117 requirements applicable to production companies claiming this credit. Such guidelines shall be exempt
118 from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).